

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:07cv11**

**ELENA M. DAVID; ARLEEN J. STACH; and  
VICTOR M. HERNANDEZ,**

**Plaintiffs**

**Vs.**

**J. STEELE ALPHIN; AMY WOODS  
BRINKLEY; EDWARD J. BROWN, III;  
CHARLES J. COOLEY; RICHARD M.  
DeMARTINI; BARBARA J. DESOER;  
JAMES H. HANCE; LIAM E. McGEE;  
EUGENE M. McQUADE; ALVARO G.  
de MOLINA; MICHAEL E. O'NEILL;  
OWEN G. SHELL, JR.; R. EUGENE  
TAYLOR; F. WILLIAM VANDIVER, JR.;  
BRADFORD H. WARNER; CHARLES W.  
COKER; STEVEN JONES; KENNETH D.  
LEWIS; BANK OF AMERICA  
CORPORATION; BANK OF AMERICA  
CORPORATION CORPORATE  
BENEFITS COMMITTEE,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the court on the defendants' Motion for Summary Judgment on Statute of Limitations Grounds (#222). The court notes that plaintiffs have timely filed their Response within the time provided in the Order (#249) of Honorable Dennis L. Howell, United States Magistrate Judge, and anticipates that defendants will file their Reply within the time provided by Judge Howell's recent Order (#253) setting June 16,

2011, as the reply deadline. It appearing that the summary judgment motion will be ripe for disposition by mid-June, the court will set such motion on for hearing during the next regular civil motions day, which is July 20, 2011, and block out two hours for such hearing. Although not prohibiting the filing of motions for continuance of such hearing, the court notes the probability of scheduling conflicts with any date and anticipates that essential counsel will be able to adjust their schedules based on the importance and age of this case.

The court has also considered the Order (#242) of Honorable Robert J. Conrad, Jr., Chief United States District Judge, which stayed setting trial until the Motion for Summary Judgment is resolved. The court anticipates resolving the summary judgment motion at the hearing or shortly thereafter. As this is the oldest case on the undersigned's docket, the parties should be prepared to discuss at the end of the hearing setting this matter on for trial in the event the action survives summary judgment. As reflected on the court's website, the court has civil terms in even number months, which begin on the first Monday.

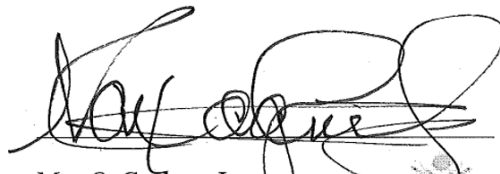
Finally, the court notes and commends the exceptional work of Judge Howell in shepherding this complex matter for the past four years. As it appears that Judge Howell has now presided over all matters up to the filing of a Reply and that the matter is now on track for resolution by the undersigned by either summary judgment or trial, the court will remove the referral as there is no need for Judge Howell to review the numerous ECF notifications that are likely to follow.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that defendants' Motion for Summary Judgment on Statute of Limitations Grounds (#222) is **CALENDARED** for hearing July 20, 2011, at a time to be set by the Clerk of this court, who is respectfully instructed to block out two hours for such proceeding. At the conclusion of the hearing the parties shall be prepared to discuss trial dates, any need for peremptory setting, and the length of trial. The Clerk of Court is respectfully instructed to remove the referral to Judge Howell.

**If the parties reach an amicable resolution of this matter in advance of hearing, the court requests early notification so that other matters may be scheduled.**

Signed: May 25, 2011



Max O. Cogburn Jr.  
United States District Judge